IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.3670 of 2002

P.Govindan .. Petitioner

versus

1. State of Tamil Nadu
   represented by the
   Secretary to Government
   Rural Development (E6) Department
   Fort St. George
   Chennai-600 009.

2. The Director of Rural Development
   Panagal Buildings
   Saidapet
   Chennai-600 015.

3. The Collector of Cuddalore District
   Cuddalore.

4. The Registrar
   Tamil Nadu Administrative Tribunal
   City Civil Court Complex
   Chennai-600 104. .. Respondents

PRAYER: Writ petition filed under Articles 226 and 227 of the Constitution of India for the issue of a writ of Certiorari calling for the records relating to the order dated 17.1.2002, made by the Tamil Nadu Administrative Tribunal in respect of O.A.No.3588 of 2001 conveyed in the common order dated 17.1.2002 made in O.A.Nos.2076, 2285 and 3588 of 2001 on the file of the Tamil Nadu Administrative Tribunal, Charge Memo Roc.No.PA1/581/2001 dated 12.1.2001 issued by the Collector of Cuddalore District and Letter No.15323/E6/2001-1, Rural Development (E6) Department dated 11.5.2001 issued by the Secretary to the Government, Rural

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Development Department, Fort St. George, Chennai-600 009 and to quash the same.

For petitioner : Mr.K.V.Srinivasaraghavan

For respondents-1 to 3 : MR. E. Sampath Kumar

ORDER

CHITRA VENKATARAMAN,J.

The writ petition is preferred by an unsuccessful applicant before the Tamilnadu Administrative Tribunal, rejecting the prayer for quashing of a charge memo dated 12.1.2001, issued by the Collector, Cuddalore District, the third respondent in the O.A. as well as in the writ petition, and the letter dated 11.5.2001 issued by the State of Tamilnadu, represented by Secretary to Government, Rural Development (E6) Department.

2. The background of the case which compelled the writ petitioner to approach the Tamil Nadu Administrative Tribunal is as follows:

The writ petitioner joined the services as Junior Assistant as early as 14.12.1965 in the Directorate of Rural Development. By successive promotions, the writ petitioner occupied the post of a Block Development Officer with effect from 24.6.1987. The petitioner's date of retirement fell on 31.1.2001. While so, the District Collector, Cuddalore, the third respondent in the writ petition, issued a charge memo dated 12.1.2001 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge memo, in Annexure-II, stated that during the period 5.4.1989 to 5.3.1990, while the petitioner was working as Block Development Officer, Kurinjipadi Panchayat Union, under various developmental schemes, a sum of Rs.6,96,787/- was issued for the issue of rice, wheat, cement and payment to Village Panchayat Presidents, to carry out improvement to the rural road, construction of community centre etc; that the relevant registers such as Stock Register, Advance Recoverable Register, Measurement Book, Vouchers, Pay Orders were not maintained and produced before the audit; that Certificate to the effect of payment of advance to Village Panchayat Presidents and rice, cement, wheat issued to the Village Panchayat Presidents were also not produced; and that out of the sanctioned amount of Rs.6,96,787/-, Rs.5,11,249/- was not adjusted by the writ petitioner. In the

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circumstances, the entire expenditure of Rs.5,11,249/- was objected to in the audit for the implementation of various programmes during 1989-90. It was alleged that for the loss suffered of Rs.5,11,249/- to the Personal Deposit Account of Panchayat Union, Kurinjipadi, the writ petitioner/applicant before the Tribunal was fully responsible on the above-said charges. The writ petitioner was called upon to submit his explanation in the enquiry to be held, to the charges mentioned in the charge memo dated 12.1.2001 issued by the third respondent herein.

3. The writ petitioner submitted his explanation dated 24.1.2001 denying the charges. It was further stated by the writ petitioner in his objection dated 24.1.2001 that he was working as an Additional Block Development Officer, Kurinjipadi, for the period from 5.4.1989 to 5.3.1990. Thereafterwards, he was transferred from that Block; that he had maintained perfect records such as stock register, advance recoverable register, Measurement book, vouchers and Pay Orders. The certificate evidencing payment to Village Panchayat Presidents and rice, cement and wheat issued to the Village Panchayat Presidents were also available in the office and that those registers were not produced to audit by his successors. The writ petitioner also pointed out that in spite of the efforts taken by him to peruse the records, no records could be produced by gathering the particulars required. Thus, the writ petitioner denied the allegations on all five charges, offering explanations.

4. The petitioner participated in the enquiry conducted before the Assistant Director, Rural Development, at Chidambaram. In the meantime, as the petitioner attained the age of superannuation on 31.1.2001, by proceedings dated 30.1.2001, under orders of the second respondent, the petitioner was placed under suspension. By order dated 31.1.2001, the second respondent issued directions for retention of the petitioner in service from 31.1.2001 under F.R.56(1)(c). The petitioner challenged this order of the second respondent herein in O.A.No.2285 of 2001. By order dated 28th March 2001 in O.A.No.2076 of 2001, the petitioner was permitted to retire without prejudice to the disciplinary proceedings and subject to the result of the O.A.

5. It is seen from the paper book filed that the enquiry was completed on the charges levelled against the petitioner. The enquiry report of the enquiry officer

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dated 20.4.2001, after considering the explanation given on 24.1.2001 and the enquiry on 13.2.2001, ended in a favourable note to the petitioner that the charges levelled against the petitioner were not proved. Accepting the plea of the writ petitioner herein that he was transferred to other Block during March, 1990 itself; that thereafter the successors were responsible to maintain and produce the records to the audit and that if the records were made available, the recovery details would be furnished; the enquiry officer, as a matter of fact, recorded that the charges were not proved; that due to efflux of time, the records were also not available. The delinquent officer, writ petitioner herein could not be made responsible for the loss. Consequently, the enquiry officer gave a finding that each of the charges, totalling in all five, was not proved. However, the favourable finding by the enquiry officer did not end the suffering of the writ petitioner.

6. Under letter dated 11.5.2001, the first respondent in the writ petition stated that although the enquiry officer, in his report, had concluded that all the five charges were held as not proved, yet, the Government had concluded all the five charges as proved. In the light of the view taken, the first respondent called upon the writ petitioner to submit further written representation, if any, within fifteen days from the date of receipt of the letter dated 11.5.2001, failing which, it would be construed that the petitioner had no further representation and the case decided on merits with available records. Considering the tenor of the notice issued by the first respondent under letter dated 11.5.2001, received by the petitioner on 1.6.2001, the writ petitioner approached the Administrative Tribunal, challenging the charge memo of the third respondent dated 12.1.2001 and the letter of the first respondent dated 11.5.2001. The challenge to these proceedings, prima facie, rested on the premise that the writ petitioner could not be held responsible for the follow-up action and non-production of registers and certificates to the audit authorities, once the writ petitioner was transferred from that Block. The petitioner also objected to the enormous delay in making the allegations as regards the non-production of the said registers. The petitioner alleged that as per the time limit prescribed by the P & A.R. Department in letter Ms.No.1118/Per.M/87 dated 22.12.1987, the disciplinary action ought to have been taken and completed within 180 days from November, 1990. However, the charge memo dated

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12.1.2001 was served on the petitioner on 13.1.2001, just 17 days before the date of retirement on 31.1.2001; that the charge memo was silent as regards the inordinate delay. It was further contended that under the relevant service Rules, the Collector was the appointing authority and that the third respondent had not applied his mind to the reply submitted to the charge sheet as to whether further enquiry was necessary. The writ petitioner further submitted that under Pension Rule 9(2)(a), the third respondent alone has to conclude the proceedings with reference to the report of the enquiry officer dated 20.4.2001; that the action of the third respondent in submitting the papers to the first respondent is a clear violation of the mandatory provision in Pension Rule 9(2)(a). In the circumstances, the petitioner alleged mala fide intention on the respondents in levelling charges against him. The petitioner further stated that in the context of the definite conclusion drawn by the enquiry officer, the proceedings now taken by the first respondent conveying the conclusion of the Government as charges proved was wholly perverse and without evidence. The petitioner accordingly prayed for quashing of the charge sheet dated 12.1.2001 issued by the third respondent and the letter of the first respondent dated 11.5.2001.

7. The respondents filed their reply affidavit before the Tribunal, supporting the charges and pleaded that the petitioner could not challenge the Government letter dated 11.5.2001 without offering explanation. Hence, the proceedings taken before the Tribunal was premature. The petitioner had filed two further Original Applications, wherein, he challenged the order of suspension and sought for a direction to the first respondent to permit the petitioner to retire from service with all monetary benefits on reaching the age of superannuation on 31.1.2001.

8. By order dated 17th January 2002, the Tamilnadu Administrative Tribunal, by a common order in O.A.Nos.2076, 2285 and 3588 of 2001, dismissed all these petitions. The Tribunal directed the Government to pass orders within a period of two months and granted the petitioner 15 days' time to file his explanation to the second show-cause notice. The present writ petition is against O.A.No.3588 of 2001.

9. Mr.K.V.Srinivasaraghavan, learned counsel for the petitioner, objected to the order of the Tribunal, contending that the Tribunal had not properly appreciated

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the grounds taken in his application. Mr.Srinivasaraghavan contended that the notice issued dated 11.5.2001 differing from the findings of the enquiry officer had indicated a closed mind as regards the objection that could be submitted and further, once the enquiry officer had given his finding, the view of the Tribunal to reply to the second show-cause notice bereft of any reason is totally unsustainable. He further submitted that the Tribunal had totally ignored the delay on the part of the Government, and instead, found fault with the petitioner for the delay in giving explanation to the second show-cause notice; that the audit objections which were reported as early as 1990, were purposely taken out from the records solely to harass and victimise the petitioner. Alleging unreasonableness and arbitrariness, the petitioner sought for quashing of the charge memo dated 12.1.2001 issued by the Collector, Cuddalore District, the third respondent herein, and the letter dated 11.5.2001, issued by the first respondent. It is a specific allegation of Mr.Srinivasaraghavan that the show-cause notice issued by the first respondent practically concludes the issue against him and that no further materials are placed in the notice issued by the first respondent, warranting a different view. Objecting to the wording of the notice foreclosing the issue except for noting the punishment as stated in the second notice of the first respondent, the petitioner's counsel placed reliance on the judgment of the Supreme Court in (1998) 7 SCC 84 in the case of PUNJAB NATIONAL BANK AND OTHERS Vs. KUNJ BEHARI MISRA.

10. Learned Government Advocate appearing for the respondents defended the order of the Tribunal to state that the petitioner was bound to give his explanation to the show-cause notice of the disciplinary authority and that instead of answering the same, he had rushed to this Court, thus effectively stalling further proceedings in the matter. In the circumstances, the respondents prayed for dismissal of the writ petition.

11. On going through the entire records in this matter, we feel that the stand of the petitioner merits acceptance. The enquiry officer, in his report, has made a categorical finding that none of the charges levelled against the petitioner were proved. At page 104 of the paper book filed, the details of the enquiry report are found. A reading of the report shows that on most of the charges, due to efflux of time, the records were not

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available and hence, the delinquent official would not be made responsible for the loss. It is also found, as a matter of fact, that the petitioner was transferred to other Block during March, 1990 itself. Hence, he could not watch over the adjustments of advances. Further, his service in that Block was very short. In the light of the findings arrived at, the enquiry officer ultimately arrived at a finding that none of the charges, counting five, were proved. On going through the notice from the Government dated 11.5.2001, we find that except for mere differing from the findings arrived at by the enquiry officer, no material whatsoever had been relied on to take a different view in this matter. While it cannot be denied that the enquiry conducted leading to an ultimate finding is not final or conclusive and the disciplinary authority has every right to either accept or differ from, the availability of such course of action to differ from the enquiry officer's view carries with it a greater responsibility on the part of the disciplinary authority to indicate the necessary base for such different finding, so that the delinquent officer has full opportunity to put forth his case. It is essential that in compliance of the principles of natural justice, the disciplinary authority has to record its tentative reasons for disagreement, to enable the delinquent officer an opportunity to represent his case. Otherwise, the entire proceedings would become so iniquitous that when the delinquent officer gets a favourable finding before the enquiry officer, he is totally at a loss to offer his objection further before the authority who seeks to differ on the very same facts without any further material.

12. The Supreme Court in (1998) 7 SCC 84 in the case of PUNJAB NATIONAL BANK AND OTHERS Vs. KUNJ BEHARI MISRA AND OTHERS, held that in a departmental proceedings, what is of ultimate importance is a finding of the disciplinary authority. In the context of such seriousness, the Supreme Court held that principles of natural justice would demand that the disciplinary authority, which is deciding against the delinquent officer, must give an opportunity to rebut the view taken, differing from that of the enquiry officer. It further held that whenever the disciplinary authority disagreed with the enquiry authority, then, it must record its tentative reasons for such disagreement and give the delinquent officer an opportunity to represent, before it records its findings. The judgment

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of the Supreme Court applies in all force to the case on hand, considering the fact that the first respondent's notice dated 11.5.2001 is silent on the reasons for taking a different view from that of the enquiry officer. As submitted by the learned counsel for the petitioner, it seemed to carry a conclusion premature that all five charges are held as proved. With such pre-emption on the conclusion, the very purpose of issuing a notice appears to be an empty formality. The purpose of issuing a notice is for enabling the delinquent officer an opportunity to persuade the disciplinary authority to accept the findings of the enquiry officer. Hence, the effectiveness of an opportunity is an absolute necessity, which must be patent even on the face of reading the notice, so that it would enable the delinquent officer to counter all the allegations, before the disciplinary authority takes further action, which may be prejudicial to the delinquent officer. The recording of a conclusion even at the notice stage is premature to give an impression to a delinquent officer that the entire exercise is a mere ritual before the ultimate order is passed. In the light of the facts found by the enquiry officer and the total absence of any material disclosed to form the basis for a different conclusion, we are constrained to accept the plea of the petitioner to set aside the order dated 11.5.2001.

13. Although normally we would not have ventured to interfere at this stage of notice, the stand of the petitioner merits acceptance on the sole ground that the first respondent, in his notice dated 11.5.2001, had not disclosed any basis or material to come to a contra view. In the light of the above, the order of the Tamil Nadu Administrative Tribunal dated 17th January 2002 is hereby quashed and the writ petition is allowed. Allowing of the writ petition, however, will not stand in the way of the first respondent from issuing a notice disclosing the reasons for proceeding further, in a manner known to law.

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There will, however, be no costs. W.P.M.P NOS. 5123 of 2002 and 25020 of 2004 are closed.
Ksv

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:
1. The Secretary to Government
   Rural Development (E6) Department
   State of Tamil Nadu
   Fort St. George
   Chennai-600 009.

2. The Director of Rural Development
   Panagal Buildings
   Saidapet, Chennai-600 015.

3. The Collector of Cuddalore District
   Cuddalore.

4. The Registrar
   Tamil Nadu Administrative Tribunal
   City Civil Court Complex
   Chennai-600 104.

+ one cc to the Government Pleader sr no. 1108
+ one cc to Mr. K.V. Srinivasa Raghavan, Advocate sr no. 974

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NM(19.01.2006)

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